

and the extent of such deletion shall be indicated on the record which is made publicly available, unless such indication would harm an interest protected by an exemption under which the deletion was made. If technically feasible, the extent of the deletion in electronic records or any other form of record shall be indicated at the place in the record where the deletion was made. However, a DON activity may publish in the FEDERAL REGISTER a description of the basis upon which it will delete identifying details of particular types of records to avoid clearly unwarranted invasions of privacy, or competitive harm to business submitters. In appropriate cases, the DON activity may refer to this description rather than write a separate justification for each deletion. DON activities may remove (a)(2)(D) records from their electronic reading room when the appropriate officials determine that access is no longer necessary.

(d) Should a requester submit a FOIA request for FOIA-processed (a)(2) records, and insist that the request be processed, DON activities shall process the FOIA request. However, DON activities have no obligation to process a FOIA request for 5 U.S.C. 552(a)(2)(A), (B), and (C) [5 U.S.C. 552] records because these records are required to be made public and not FOIA-processed under paragraph (a)(3) of the FOIA.

(e) DON activities may share reading room facilities if the public is not unduly inconvenienced. When appropriate, the cost of copying may be imposed on the person requesting the material in accordance with FOIA fee guidelines (see subpart C of this part).

(f) DON activities shall maintain an index of all available documents. A general index of FOIA-processed (a)(2) records shall be made available to the public, both in hard copy and electronically by 31 December 1999. To comply with this requirement, DON activities shall establish a GILS record for each document it places in a reading room. No (a)(2) materials issued or adopted after 4 July 1967, that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such mate-

rials. Such materials issued or adopted before 4 July 1967, need not be indexed, but must be made available upon request if not exempted under the instruction in this part.

(g) An index and copies of unclassified Navy instructions, forms, and addresses for DON activities (i.e., the Standard Navy Distribution List (SNDL) are located on the Navy Electronics Directives System (<http://neds.nebt.daps.mil/>).

(h) DON material published in the FEDERAL REGISTER, such as material required to be published by Section 552(a)(1) of the FOIA, shall be made available by JAG in their FOIA reading room and electronically to the public.

(i) Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, “(a)(1)” materials may, when feasible, be made available to the public in FOIA reading rooms for inspection and copying, and by electronic means. Examples of “(a)(1)” materials are: descriptions of an agency’s central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

§ 701.7 Relationship between the FOIA and PA.

Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records. In some instances, they may cite neither Act, but will imply one or both Acts. For these reasons, the following guidelines are provided to ensure requesters receive the greatest amount of access rights under both Acts:

(a) If the record is required to be released under the FOIA, the PA does not bar its disclosure. Unlike the FOIA, the PA applies only to U.S. citizens and aliens admitted for permanent residence. Subpart F of this part implements the DON’s Privacy Act Program.

(b) Requesters who seek records about themselves contained in a PA system of records and who cite or imply only the PA, will have their requests processed under the provisions of both the PA and the FOIA. If the PA

Department of the Navy, DoD

§ 701.8

system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1) and the records, or any portion thereof are exempt under the FOIA, the requester shall be so advised with the appropriate PA and FOIA exemption. Appeals shall be processed under both Acts.

(c) Requesters who seek records about themselves that are not contained in a PA system of records and who cite or imply the PA will have their requests processed under the provisions of the FOIA, since the PA does not apply to these records. Appeals shall be processed under the FOIA.

(d) Requesters who seek records about themselves that are contained in a PA system of records and who cite or imply the FOIA or both Acts will have their requests processed under the provisions of both the PA and the FOIA. If the PA system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1), and the records, or any portion thereof are exempt under the FOIA, the requester shall be so advised with the appropriate PA and FOIA exemption. Appeals shall be processed under both Acts.

(e) Requesters who seek access to agency records that are not part of a PA system of records, and who cite or imply the PA and FOIA, will have their requests processed under FOIA, since the PA does not apply to these records. Appeals shall be processed under the FOIA.

(f) Requesters who seek access to agency records and who cite or imply the FOIA will have their requests and appeals processed under the FOIA.

(g) Requesters shall be advised in final responses which Act(s) was (were) used, inclusive of appeal rights.

(h) The time limits for responding to the request will be determined based on the Act cited. For example, if a requester seeks access under the FOIA for his or her personal records which are contained in a PA system of records, the time limits of the FOIA apply.

(i) Fees will be charged based on the kind of records being requested (i.e., FOIA fees if agency records are requested; PA fees for requesters who are seeking access to information contained in a PA system of record which

is retrieved by their name and/or personal identifier).

§ 701.8 Processing FOIA requests.

Upon receipt of a FOIA request, DON activities shall:

(a) Review the request to ensure it meets the minimum requirements of the FOIA to be processed.

(1) *Minimum requirements of a FOIA request.* A request must be in writing; cite or imply FOIA; reasonably describe the records being sought so that a knowledgeable official of the agency can conduct a search with reasonable effort; and if fees are applicable, the requester should include a statement regarding willingness to pay all fees or those up to a specified amount or request a waiver or reduction of fees.

(2) If a request does not meet the minimum requirements of the FOIA, DON activities shall apprise the requester of the defect and assist him/her in perfecting the request.

NOTE TO PARAGRAPH (a)(2): The statutory 20 working day time limit applies upon receipt of a "perfected" FOIA request.)

(b) When a requester or his/her attorney requests personally identifiable information in a record, the request may require a notarized signature or a statement certifying under the penalty of perjury that their identity is true and correct. Additionally, written consent of the subject of the record is required for disclosure from a Privacy Act System of records, even to the subject's attorney.

(c) *Review description of requested record(s).* (1) The FOIA requester is responsible for describing the record he/she seeks so that a knowledgeable official of the activity can locate the record with a reasonable amount of effort. In order to assist DON activities in conducting more timely searches, a requester should endeavor to provide as much identifying information as possible. When a DON activity receives a request that does not reasonably describe the requested record, it shall notify the requester of the defect in writing. The requester should be asked to provide the type of information outlined in this paragraph. DON activities are not obligated to act on the request until the requester responds to the